

Susan Zuscak

From: Davis, Debbie
Sent: Thursday, May 16, 2019 9:05 AM
To: rreiss92@gmail.com
Cc: Susan Zuscak
Subject: FW: Report from the Annual Town Meeting
Attachments: ATM REPORT 5-7-19 V1.docx

When requesting public records please do so through the Town Clerk.
david@leicesterma.org

Article 23 is the solar bylaw.

Deborah K. Davis

Leicester Town Clerk, Notary, Burial Agent
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M,W,Th 8-5pm
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Deadlines and Important Info. – 2019 Elections and Town Meetings

Date	Event	
April 1, 2019	Nomination Papers available	
April 23, 2019	Last day to obtain Nomination Papers & also submit to TC by 5:00pm	
April 17, 2019	Last day to Register to Vote: Annual Town Meeting & Annual Town Election	
May 7, 2019	Annual Town Meeting at 7:00pm	
June 11, 2019	Annual Town Election-Polls open Noon-8 pm	

ARTICLE 21 DISPOSITION OF 11 MEMORIAL DRIVE (MEMORIAL SCHOOL), MAP 39, BLOCK A7

A second vote was taken on the Disposition of Memorial School

- **REQUIRES A 2/3 VOTE: MOTION FAILED (60-48) 2-ABSTAIN**

ARTICLE 23 GROUND MOUNTED SOLAR ENERGY SYSTEMS BYLAW AMENDMENT

To see if the Town will vote to amend the Leicester Zoning Bylaw Sections 5.14, Ground-Mounted Solar Energy Systems and Section 3.2, Subsection 3.2.05 (Transportation, Communication, Utility) as follows:

A. Amend Section 5.14, Ground-Mounted Solar Energy Systems, subsection 6.8. (Land Clearing, Habitat Protection, and Screening Requirements), by amending subsections A and C as follows:

A. Land Clearing

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the solar energy systems or otherwise prescribed by applicable laws, regulations, and bylaws. Vegetation includes all types of vegetation, including trees. Solar energy systems, to the maximum extent feasible, shall be located on previously-disturbed sites that do not require tree clearing. Existing vegetation shall remain in required setback areas, ~~except where such vegetation would shade the solar energy system. However, in no event shall clearing of existing vegetation in setbacks exceed half the required setback width.~~ In the SA district, land clearing shall not exceed sixty (60%) of the total lot area. Adequate erosion control measures shall be provided for all proposed land clearing. The Planning Board may require phasing of tree clearing to minimize potential erosion control problems.

C. Screening/Buffering:

Medium-scale and large-scale ground-mounted solar energy systems shall be screened year-round from all adjoining abutting properties in residential use in all zoning districts and from public and private ways in residential districts (SA, R1, and R2). For purposes of this section, abutting properties shall include adjacent properties and properties directly opposite on any public or private street or way. Such screening shall be provided in the required setback areas and where existing vegetation in setbacks is insufficient for year-round screening purposes shall consist of dense vegetative screening, fencing, berms, or other methods to adequately screen the facility, depending on site specific conditions. Landscaping shall be maintained and replaced as necessary by the owner/operator of the solar energy system.

B. Amend the Zoning Bylaw, Section 3.2, Schedule of Use, Subsection 3.2.05 (Transportation, Communication, Utility), as shown below:

3.2.05 TRANSPORTATION, COMMUNICATION, UTILITY	SA	R1	R2	B	CB	I	BI-A	HB-1 & HB-2
Large-Scale Ground-Mounted Solar Energy System	SP	<u>SP</u> <u>N</u>	<u>SP</u> <u>N</u>	SP	N	Y	Y	Y
Medium-Scale Ground-Mounted Solar Energy System	SP	<u>N</u> <u>SP</u>	<u>N</u> <u>SP</u>	Y	N	Y	Y	Y

C. Amend Section 5.14, Ground-Mounted Solar Energy Systems, by inserting a new subsection 6.13:

- 6.13. The total number of medium and large-scale ground-mounted solar energy systems in Leicester shall be limited to twenty (20). Facilities constructed prior to this bylaw are counted in this total. For the purposes of this bylaw, projects on separate parcels are considered separate projects, even if such parcels are under common ownership.

or take any action in relation thereto.

PROPOSED MOTION

Dianna Provencher moved that the article be voted as written

PLANNING BOARD RECOMMENDATION

Favorable Action (3:0:0)

FINANCE ADVISORY BOARD RECOMMENDATION

No recommendation without prejudice

SELECT BOARD RECOMMENDATION

Favorable Action (5-0-0)

DESCRIPTION

The purpose of this amendment is to make corrective amendments to the Leicester Zoning Bylaw related to Ground-Mounted Solar Energy Systems, and to improve the bylaw to better protect natural resources and abutting property owners.

VOTE REQUIRED FOR PASSAGE Requires a two-thirds majority per M.G.L. c. 40A, § 5.

- **REQUIRES A 2/3 VOTE: (104-25) 4-ABSTAIN**

ARTICLE 24 EARTH FILL AND REMOVAL

To see if the Town will amend the Leicester Zoning Bylaw by inserting a new Section 5.16, Earth Filling and Removal, and amending Section 3.2, Subsection 3.2.04 (Industrial), Section 3.30 (BR-1 Zone) and Section 5.3 (Uses Prohibited in all Districts) as follows:

A. Insert a new Section 5.16, Earth Filling & Removal, as follows:

Section 5.16 Earth Filling & Removal

A. Purpose

The purpose of this bylaw is to regulate filling of land and earth removal operations to protect of public health, safety and welfare, and to protect the integrity of natural resources in the Town of Leicester.

B. Definitions:

1. EARTH: This term shall include soil, loam, sand, gravel, clay, peat, rock, or other earth material in solid form.
2. EARTH FILLING OPERATION: the permanent filling of land that involves greater than 1,000 cubic yards of or more of earth and/or fill material per calendar year (January through December)
3. EARTH REMOVAL OPERATION: Any commercial mining, stripping, quarrying, filling, digging or blasting of earth originating from the Town of Leicester and its transportation into or out of the Town of Leicester.
4. FILL MATERIAL: Any geologic, man-made, recycled or processed material including in its entirety or as a proportion containing clay, rock, sand, gravel, peat and sediment. Material meeting the Federal and/or State definition of solid or hazardous waste or as toxic, infectious, radioactive, corrosive, or reactive material is specifically excluded.
5. FILLING OF LAND: The importation, use, redistribution, alteration or movement of earth and or fill material on or within any land area or water body within the Town of Leicester.
6. GRAVEL: Loose fragments of rock or coarse aggregate resulting from natural disintegration and abrasion of rock or processing of weakly bound conglomerate.
7. LOAM OR TOPSOIL: A soil consisting of a friable mixture of varying proportions of clay, sand, silt, and organic matter.
8. PROCESSING: The sorting or separation of earth into distinct categories based on particle size or type usually through the use of a screening process, not including stone crushing.
9. SILT: Loose sedimentary material with rock particles usually less than 1/16 mm or less in diameter based on the Wentworth scale of measurement.
10. SITE: A distinct portion of contiguous lots, under the same or different ownerships, on which an earth removal and/or fill operation is conducted, or is proposed to be conducted, under the Permit.
11. STONE CRUSHING: The mechanical operation which creates smaller sized stones or stone products from larger sized stones, boulders or particles typically using a crushing plant or similar machinery.
12. SIGNIFICANTLY GREATER CONCENTRATION: The concentration of a substance in earth or fill materials as measured by Federal or State-approved analytical methods, which is one order of magnitude or greater in concentration than the same substance measured in existing, pre-fill earth materials.

C. Applicability

1. A Special Permit from the Planning Board shall be required for:
 - a. The filling of land that involves greater than 1,000 cubic yards of or more of earth and/or fill material per calendar year (January through December).
 - b. Earth removal operation that that involves excavation of more than 1,000 cubic yards of earth material per calendar year (January through December).
2. Contiguous parcels under the same ownership or right of operation shall be considered one location for the purpose of this bylaw.

D. Exemptions from Special Permit Requirements

1. Earth removal or placement of fill associated with the installation of septic systems, which shall be governed by the Commonwealth of Massachusetts Environmental Code (Title 5, 310 CMR 15.00).
2. Earth removal or the placement of fill associated with the installation of foundations for new buildings and/or building additions, which shall be governed by M.G.L. c. 143 and the Commonwealth of Massachusetts Building Code (780 CMR).
3. Earth removal or the placement of fill associated with grading and/or landscaping in connection with the otherwise lawful construction of new driveways, structures, buildings and/or building additions.
4. Earth removal or the placement of fill associated with the normal use of a cemetery.
5. Earth removal or the placement of fill associated with grading in the course of normal and customary use of land in connection with a bona fide commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture operation that is exempt under MGL c.40A, §3.
6. Earth removal or the placement of fill, where the operation occurs entirely within an individual parcel or between contiguous parcels under common ownership and where a town-accepted public way is not used for the transportation of the material.
7. Earth removal or the placement of fill related to a new subdivision road that has been approved by the Planning Board, or by the Zoning Board of Appeals pursuant to M.G.L. c. 40B, where there is already a bond in place with the Town to ensure performance.
8. Earth removal or the placement of fill for the construction, maintenance and repair of fire ponds, existing public roadways or the installation of public utilities and appurtenances.
9. Operations lawfully in existence at the time of adoption of this bylaw to the extent that such operations are protected by MGL c.40A, §6.

E. Prohibited Activities and Uses:

The following activities and uses are prohibited in the Town of Leicester:

1. Use or importation of earth or fill materials whose quality would either meet Federal or State criteria for definition as being toxic, reactive, radioactive, corrosive, explosive, hazardous, infectious, oil-impacted, or as a hazardous or solid waste.
2. Use or importation of earth or fill containing toxic, reactive, corrosive, hazardous, infectious, or solid waste at individual concentrations, or presence by weight or volume, which would render such material a regulated substance or material subject to M.G.L. c. 21E or as a Solid Waste as defined in the regulations promulgated by the Massachusetts Department of Environmental Protection as 310 Code of Massachusetts Regulations (CMR) 19.00.
3. Use or importation of earth or fill at any location not otherwise regulated or permitted for acceptance of earth materials containing toxic, reactive, radioactive, corrosive, hazardous, infectious, oil, solid waste, or metals when such fill materials contain concentrations of these substances less than regulatory criteria established for reporting or special handling purposes but with one or more significantly greater concentrations by weight or volume than existing, pre-fill concentrations.
4. Transport of earth or fill materials in a manner which is prone to release the same during transport.
5. Use of earth or fill materials in a manner which renders the fill area structurally unstable, produces uncontrolled leachate or off-gases, creates nuisance conditions, creates uncontrolled storm water run-off, siltation, or visually apparent erosion of fill materials, or where finished fill grading slopes are not properly stabilized.
6. Construction of permanent structures over or adjacent to areas of fill unless the fill material is structurally stable and free of emissions or other hazardous criteria relative to permanent building construction and use.
7. Use of fill material which may cause chemical or physical impact to off- site ground water, surface water, or wetland resource areas without specific Soil Management Plan and field procedures designed to prevent degradation of

these natural resources. This prohibited use specifically includes, but is not limited to, fill materials containing nutrient or salt concentrations at significantly greater concentrations than pre-existing soil conditions on the site.

F. General Standards

1. Earth Filling Operations:

- a. Throughout the length of the project, the applicant must identify the point of earth material origin and receiving location for fill material and must document that 1) that the earth material is not otherwise prohibited from use as fill material in accordance with Leicester's Zoning Bylaw and Regulations or other applicable Federal and State standards, regulations, and guidelines; and, 2.) that a Massachusetts Licensed Site Professional (LSP) has compared analytical results of earth materials to existing, pre-fill conditions specific to the location and determined that the concentrations of substances in the earth materials intended for use as fill do not contain significantly greater concentrations than existing, pre-fill conditions for that location. The applicant will facilitate off-site inspections at points of origin for earth materials if requested by the Planning Board or its agents.
- b. The LSP shall perform site inspections during the course of the project as specified by the Planning Board to ensure compliance with Leicester's Bylaws and Regulations and shall upon completion of work provide written certification signed and stamped stating that all earth materials used for fill comply with Leicester's Bylaws and Regulations and applicable Federal and State Regulations.
- c. Should an applicant or Special Permit holder seek an Administrative Consent Order (ACO) from the Massachusetts Department of Environmental Protection to use or deposit earth or fill materials in the Town, the Town reserves all rights to impose additional requirements upon the applicant or Special Permit holder to assure mitigation of all impacts or effects of the activities undertaken pursuant to such ACO.

2. Earth Removal Operations

- a. All topsoil and subsoil stripped from operation areas shall be stockpiled, seeded with an erosion control seed mixture, and used in restoring the area.
- b. If erosion control structures are utilized, these devices shall be in place and stabilized before excavation can begin in the affected area. These structures shall be inspected and maintained in accordance with the approved plan and the capacity of the structural device.
- c. Except for fire ponds, no area shall be excavated so as to cause the accumulation of free-standing water. Drainage shall be provided as needed in accordance with accepted engineering and conservation practices. Measures shall be taken to ensure that silting and sedimentation of nearby streams is not caused by a temporary or permanent drainage systems on site. Drainage shall not lead directly into streams, ponds, abutting properties nor shall drainage from access roads drain directly onto public ways.
- d. The active excavation area shall not exceed a total of three (3) acres at any one time. Natural vegetation shall be left and maintained on undisturbed land for screening and noise reduction purposes.
- e. Restoration shall be carried on simultaneously with excavation, so that when any three (3) acre operation area has been excavated, at least two (2) acres shall be restored before work commences on the next contiguous three (3) acres.

G. Financial Security; Inspection of Conditions

1. The applicant shall provide financial surety in the form of a cash deposit or bond, or similar financial surety acceptable to the Planning Board, to insure faithful performance of the work to be undertaken pursuant to the conditions of approval or approval with modifications, and conditioned upon completion of the regulated activity in accordance with the conditions established by the Planning Board at the time of granting of the Special Permit or any subsequent changes of such conditions.
2. The Planning Board may waive or reduce the financial surety requirements, but no such financial surety shall be released, until the applicant has complied with the conditions of approval and this bylaw. The Planning Board shall act on a requested release of the financial surety within sixty-five (65) days of submission of the applicant for such release.

H. Special Permit Procedures

1. The Planning Board may adopt and periodically amend its Special Permit Regulations for the implementation of this Bylaw. Such Regulations may set forth performance standards for earth removal and fill operations, impose filing and consultant fees, define additional terms not inconsistent with the Bylaw, and establish administrative procedures. Failure by the Planning Board to adopt such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.
2. Any person wishing to obtain a Special Permit under this Section shall file a completed application for a Special Permit together with any required supporting data, maps, and the filing fee in accordance with the Planning

Board's Special Permit Regulations and Fee Regulations.

3. Any Permit issued is non-transferable and shall automatically expire upon completion of the earth removal or fill project for which it was issued or at such time as may be specified in said Special Permit. In no case shall a Special Permit be issued initially for a period longer than three years. A Special Permit may be renewed for up to two years or lesser time as determined by the Planning Board after evidence is presented that all conditions of the expiring Special Permit have been complied with and the work has been performed in good faith. There is no limit on the number of Permit renewals an Applicant can apply for. A public hearing may be required by the Planning Board, at its discretion, for renewal of Special Permits.
4. The applicant shall pay reasonable fees for independent inspection to assess adherence to the Planning Board's special permit conditions in accordance with the Planning Board's Special Permit Regulations and Fee Regulations. Said fee shall be deposited into a Revolving Fund Account pursuant to M.G.L. c. 40, §53G.

I. Special Permit Criteria for Earth Removal & Fill Operations

1. The Planning Board shall use the general standards for Special Permit Approval contained in the Planning Board Special Permit Regulations, any district-specific special permit requirements, and the additional standards contained herein
2. Permits for earth removal and/or fill operations shall be granted by the Planning Board only upon its written determination that the proposed use shall not cause substantial detriment to the neighborhood, or the Town, considering the characteristics of the site and the proposal in relation to the site and surrounding environment. In addition to any specific factors that may be set forth elsewhere in this Bylaw and its associated Regulations, such determination shall include consideration of each of the following:
 - a. Impacts on the natural environment
 - b. Traffic flow and safety, including loading and unloading; and
 - c. Management of stormwater
3. No Special Permit shall be issued for the removal of earth or the placement of fill in any location if such an operation will:
 - a. endanger the public safety, public health or constitute a nuisance; or
 - b. produce noise, dust, or other noxious effects observable at the lot lines of the property in amounts objectionable or detrimental to the normal use of adjacent properties; or
 - c. result in the transportation of materials in such manner as to cause traffic congestion, dust, spillage, noise, or other nuisances or hazards, particularly on residential streets; or
 - d. result in the transportation over ways which will be unduly injured thereby; or
 - e. cause irreparable harm to or loss of important wildlife, wildlife habitat or rare plant species indigenous to the area; or
 - f. result in stormwater damage to abutting properties.

J. Conditions of Special Permit

The Planning Board may impose reasonable conditions on any special permit granted under this bylaw for earth filling or earth removal operations, including but not limited to the following:

1. Limitations on the size, number, and maximum weight of trucks that may access the property in any 24-hour period as well as routes of travel
2. Requirements for site security procedures
3. Limitations on hours of operation
4. Requirements for regular access to the Town of Leicester or its agents for the purpose of inspection of records or field conditions, and enforcement of this Bylaw
5. Implementation of erosion and sedimentation control measures to prevent material from moving offsite or into wetland or water resource areas
6. Limitations on slope
7. Requirements for ongoing monitoring by licensed professionals at the Applicant's expense to document full conformance with this bylaw and any conditions of approval.
8. Requirements for site stabilization and restoration

K. Violations and Enforcement

1. The Planning Board or its authorized agent shall enforce this Bylaw, its regulations, and the requirements and conditions of Permits issued thereunder, and may pursue civil and criminal remedies for violations of the same including but not limited to fines per Zoning Bylaw 6.5 (Penalty).
2. The Building Inspector or other authorized agent of the Planning Board is authorized to conduct inspections on behalf of the Planning Board. To the extent permitted by law, or if authorized by the owner, operator, or other person in control of the site, the Building Inspector or other agent of the Planning Board may enter on the site to conduct inspections.
3. The Building Inspector or other authorized agent of the Planning Board may issue such orders as are deemed necessary to stop violations and ensure compliance with this Bylaw, its regulations, and Permits, including an order to cease and desist operations.
4. If the violator holds a Special Permit issued under this Bylaw, the Planning Board may without prior hearing order that the violator cease and desist from violations of this bylaw and/or conditions of the Special Permit, or may suspend or revoke the Special Permit after a public hearing, at which point all operations shall cease until such time as the necessary measures are taken to assure compliance with this Bylaw and a new Permit is issued.

L. Change of Conditions

1. Any change in the activities not included in, or contemplated by, the Special Permit application or approved pursuant to a modification to a Special Permit shall be brought to the attention of the Planning Board or its agents prior to, or immediately following, such change in activities.
2. This notice shall be in writing and include specific actions recommended by the applicant to correct or to demonstrate compliance with the Special Permit and this bylaw. All operations shall be suspended within one operation day following such occurrence and remain suspended until the Planning Board or its agents have reviewed and amended the Special Permit with the applicants recommended change(s). Nothing herewith shall be interpreted to require acceptance of changed conditions or recommended corrective actions by the Planning Board.

B. Amend the Zoning Bylaw, Section 3.2, Schedule of Use, Subsection 3.2.04 (Industrial), as shown below:

3.2.04 INDUSTRIAL		SA	R1	R2	B	CB	I	BI-A	HB-1 & HB-2
4.	Earth Removal Operation (See Section 5.16) Gravel, sand or stone removal for commercial venture.	SP	SP	SP	SP	N	SP	SP	N
5.	Earth Filling Operation (See Section 5.16)	SP	SP	SP	SP	SP	SP	SP	SP

C. Amend Section 3.30, Business Residential-1 (BR-1) Zone, by re-numbering use nn. as oo. and inserting use pp. as follows:

~~nn.oo.~~ Brewery, Distillery, Winery by special permit

~~pp.~~ Earth Removal Operation or Earth Filling Operation by special permit from the Planning Board (See Section 5.16)

D. Amend Section 5.3, Uses Prohibited in All Districts, subsection 5.3.01, as follow:

5.3.01 Dumping of other than clean fill. Dumping of refuse, contaminated or combustible materials except as a municipal function. See definition of Clean Fill (Section 1.3) and Section 5.16 (Earth Filling & Removal).

5.3.04 The stripping and removal of topsoil for use outside of the Town of Leicester boundaries. See Section 5.16 (Earth Filling & Removal)

or take any action in relation thereto.

PROPOSED MOTION

Sandy M. Wilson moved that the article be voted as written.

PLANNING BOARD RECOMMENDATION

Favorable Action (3:0:0)

FINANCE ADVISORY BOARD RECOMMENDATION No recommendation, without prejudice

SELECT BOARD RECOMMENDATION Favorable Action (5-0-0)

DESCRIPTION

Currently, there are no standards or procedural requirements for importation of fill or commercial earth removal operations. These amendments establish permitting requirements and reasonable regulations for earth fill and removal operations.

VOTE REQUIRED FOR PASSAGE Requires a two-thirds majority per M.G.L. c. 40A, § 5.

ARTICLE 24 -Amend EARTH FILL AND REMOVAL

A vote was taken to amend some of the wording in the bylaw.

VOTE REQUIRED FOR PASSAGE Requires a simple majority

- **VOTED BY A SIMPLE MAJORITY (115-7) 2-ABSTAIN**

ARTICLE 24 - EARTH FILL AND REMOVAL

Marjorie Cooper moved that page 23 of the Town Meeting Guide, section D. Exemptions from Special Permit Requirements #5 Earth removal or the placement of fill associated with grading in the course of normal and customary use of land in connection with a bona fide commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture operation that is exempt under MGL c.40A, §3 be changed to read

New #5: Earth removal or the replacement of fill in connection with commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture compliant with the provision of MGL Chapter 40A, §3.

VOTE REQUIRED FOR PASSAGE Requires a two-thirds majority per M.G.L. c. 40A, § 5.

- **REQUIRES A 2/3 VOTE: (102-23) 1-ABSTAIN**

ARTICLE 25 MARIJUANA CULTIVATION (Clarification of the greenhouse issue)

To see if the Town will vote to amend the Leicester Zoning Bylaw Section 5.15, Medical Marijuana Treatment Center and Marijuana Establishments, Subsection 5.15.02 (Standards) by amending paragraph A and inserting new paragraph J as follows:

5.15.02 STANDARDS:

A. General

All aspects of a Medical Marijuana Treatment Center or Marijuana Establishment must take place at a fixed location within a fully enclosed building with opaque walls and shall not be visible from the exterior of the ~~business building~~. (Greenhouses with transparent or translucent walls are prohibited; glass or other transparent roofs are allowed. See related subsection J., Lighting). No outside storage of marijuana, related supplies, or educational materials is permitted. Medical Marijuana Treatment Centers and Marijuana Establishments are not permitted as a home occupation. Site Plan Review is required for all Medical Marijuana Treatment Centers and Marijuana Establishments, including when the facility will reuse an existing structure.

J. Lighting

Lighting shall not extend beyond property lines. Artificial lighting from within the building(s) shall not create light pollution.

or take any action in relation thereto.

PROPOSED MOTION

Harry R. Brooks moved that the article be voted as written

Susan Zuscak

From: cmsmailer@civicplus.com on behalf of Contact form at Leicester MA
<cmsmailer@civicplus.com>
Sent: Thursday, May 09, 2019 2:43 PM
To: Susan Zuscak
Subject: [Leicester MA] 5/7/2019 (Sent by Ron T Reiss, rreiss92@gmail.com)

Hello zuscaks,

Ron T Reiss (rreiss92@gmail.com) has sent you a message via your contact form
(<https://www.leicesterma.org/user/16993/contact>) at Leicester MA.

If you don't want to receive such e-mails, you can change your settings at
<https://www.leicesterma.org/user/16993/edit>.

Message:

Greetings,

I was looking online for the new Solar Ordinance that was voted on in the most recent meeting.

Do you have minutes or a copy of that information?

Thanks

Ron Reiss